

**CONSTITUTION  
OF  
AUSTRALIAN ASSOCIATION OF NATIONAL ADVERTISERS  
ABN 54 003 179 673**

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**DEFINITIONS AND INTERPRETATION**

1. In this Constitution, unless the context otherwise requires:

"**Agency**" means any person, firm, company, body corporate or organisation whose principal business activity involves the creation and/or production and/or placement of advertising and/or marketing in any form;

"**Appointed Board Position**" means a position on the Board held by a person appointed by the members of the Board holding Elected Board Positions in accordance with this Constitution;

"**Associate Member**" means those persons, firms, companies, bodies corporate and organisations admitted to Associate Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution, having the rights, powers and obligations set out in Rule 9;

"**Associate Membership**" means membership of the Company as an Associate Member;

"**Auditors**" means the auditors of the Company appointed from time to time;

"**Board**" means as at the date of the 2008 annual general meeting, those persons elected to the Board on that date and thereafter, those persons elected and appointed as the board of directors of the Company in accordance with this Constitution from time to time, being all those persons holding Appointed Board Positions and Elected Board Positions;

"**Business Day**" means any day other than a Saturday, Sunday or public holiday in New South Wales;

"**Category**" means any category of positions on the Board for which there is a maximum number of positions available to be filled in accordance with this Constitution, including positions for Media Members, Service Provider Members, Ordinary Members, Ordinary Members from particular industries (as determined by the Board) and their representatives;

"**Company**" means Australian Association of National Advertisers ABN 54 003 179 673;

"**Corporations Act**" means the *Corporations Act* 2001 (Cth);

"**Elected Board Position**" means as at the date of the 2008 annual general meeting, those Board positions to which persons are elected on that date and thereafter, a position on the Board held by an Ordinary Member, Service Provider Member or Media Member or their representative, such persons being elected to those positions by the Members entitled to vote on such matters in accordance with this Constitution and in either case includes persons appointed to fill casual vacancies in relation to those positions;

"**Insolvency**" means bankruptcy, winding up, liquidation, dissolution, becoming insolvent under administration (as defined in Section 9 of the Corporations Act), being placed under administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions

or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters;

**"Marketer"** means any person, firm, company, body corporate or organisation providing goods or services throughout the Commonwealth of Australia or any part of the Commonwealth of Australia and using advertising and/or marketing in any of its forms in furtherance of providing those goods and services;

**"Media Member"** means those persons, firms, companies, bodies corporate, organisations or associations:

- (a) admitted to Media Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution; and
- (b) all those persons who, prior to the date of the 2008 annual general meeting, were Service Provider Members and Media Providers other than those persons who in the year prior to the date of the 2008 annual general meeting are deemed Ordinary Members because of paragraph (b) in the definition of Ordinary Member in this Constitution,

having the rights, powers and obligations set out in Rule 8;

**"Media Membership"** means membership of the Company as a Media Member;

**"Media Provider"** means any person, firm, company, body corporate or organisation in the business of providing Media Services throughout the Commonwealth of Australia or any part of the Commonwealth of Australia;

**"Media Services"** means the publication or broadcast of advertising and/or marketing material whether in print, on radio, on television (whether free-to-air or pay), on video or on other physical means of distribution;

**"Member"** means any person, firm, company, body corporate, organisation or association admitted to membership as an Ordinary Member, Service Provider Member, Media Member, Associate Member, Tertiary Institution Affiliate Member or Student Affiliate Member pursuant to this Constitution and whose membership has not ceased or lapsed under this Constitution;

**"Month"** means a calendar month;

**"Objects of the Company"** means the objects set out in Rule 105;

**"Ordinary Member"** means those persons, firms, companies, bodies corporate and organisations:

- (a) admitted to Ordinary Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution; and
- (b) all those persons who, prior to the date of the 2008 annual general meeting were Service Provider Members who in the year prior to the date of the 2008 annual general meeting spent over \$1 million on the direct costs of producing and publishing advertising and marketing in any of its forms in furtherance of providing its goods and/or services throughout the Commonwealth of Australia or any party of the Commonwealth of Australia,

having the rights, powers and obligations set out in Rule 6;

**"Ordinary Membership"** means membership of the Company as an Ordinary Member;

**"Researcher"** means any person, firm, company, body corporate or organisation whose principal activity is the measurement and statistical analysis of audiences and circulation of advertising and/or marketing material and the analysis of audience perception and reaction to such material;

**"Seal"** means the common seal (if any) of the Company;

**"Secretary"** means any person appointed to perform the duties of a secretary of the Company and includes an assistant Secretary and an Honorary Secretary;

**"Service Provider"** means any person, firm, company, body corporate or organisation retained or contracted to provide services throughout the Commonwealth of Australia or any part of the Commonwealth of Australia in relation to advertising and/or marketing in any form by a Marketer including, without limitation, an Agency, Researcher, telecommunications user group, promotions consultant, telemarketer, public relations consultant, media monitor, market researcher (quantitative or qualitative) and media planning and/or buying organisation but not being a Media Provider;

**"Service Provider Member"** means those persons, firms, companies, bodies corporate and organisations admitted to Service Provider Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution, having the rights, powers and obligations set out in Rule 7 but excluding those persons who, at the date of the 2008 annual general meeting of the Company, are deemed to be Ordinary Members or Media Members pursuant to the definitions of those terms in this Constitution;

**"Service Provider Membership"** means membership of the Company as a Service Provider Member;

**"Student"** means a student of a university or other tertiary institution as approved by the Board;

**"Student Affiliate Member"** means those persons admitted to Student Affiliate Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution, having the rights, powers and obligations set out in Rule 11;

**"Student Affiliate Membership"** means membership of the Company as a Student Affiliate Member;

**"Tertiary Institution"** means a university or other tertiary institution as approved by the Board;

**"Tertiary Institution Affiliate Member"** means those persons, firms, companies, bodies corporate and organisations admitted to Tertiary Institution Affiliate Membership of the Company pursuant to Rule 18 and whose membership has not ceased or lapsed under this Constitution, having the rights, powers and obligations set out in Rule 10; and

**"Tertiary Institution Affiliate Membership"** means membership of the Company as a Tertiary Institution Affiliate Member.

2. In this Constitution, unless the context otherwise requires:

- (a) expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (b) words importing the singular number also include the plural and vice versa;
- (c) words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Corporations Act and if those words or expressions are defined in the Corporations Act, such definitions shall be used to interpret the words and expressions;

- (d) a reference to any statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
  - (e) notwithstanding any other provision of this Constitution, a reference to a "representative" or a person "representing" a Member shall be a representative duly appointed by the entity concerned in accordance with the Corporations Act or, as long as not inconsistent with the Corporations Act, a person duly authorised in writing to act as a representative of the entity concerned.
3. The Company is established for the purposes set out in Rule 105.

### **MEMBERSHIP**

4. The Board may admit persons to membership of the Company on such terms and conditions as the Board, in its absolute discretion, determines. Without limitation, the Board may determine the fees payable by a Member and the terms on which the fees may be paid or satisfied.
5. Subject to Rule 4, there shall be six (6) categories of membership as follows:
- (a) Ordinary Membership;
  - (b) Service Provider Membership;
  - (c) Media Membership;
  - (d) Associate Membership;
  - (e) Tertiary Institution Affiliate Membership; and
  - (f) Student Affiliate Membership.
6. All Ordinary Members shall:
- (a) be entitled to receive notice of, attend, vote in person, by proxy, attorney or representative at and be counted for the purposes of constituting a quorum at all general meetings of the Company;
  - (b) if a person, be entitled to be elected to the Board in an Elected Board Position and otherwise, be entitled to have one (1) of their representatives elected to the Board in an Elected Board Position provided that, subject to Rule 49 no more than eight (8) Ordinary Members or representatives of Ordinary Members shall be entitled to be elected to the Board in an Elected Board Position at any one time, no more than three (3) of those being from the same industry (as determined by the Board from time to time);
  - (c) be entitled to receive publications of the Company, invitations to attend activities of the Company and industry information, when available;
  - (d) be bound by Rule 106;
  - (e) if a person, be entitled to be appointed to a sub-committee of the Board and otherwise, be entitled to have a representative appointed to each sub-committee of the Board; and
  - (f) be entitled to all other rights and privileges which members of corporations such as the Company are given by the Corporations Act, subject, if permitted by the Corporations Act, to anything inconsistent in this Constitution.

## 7. All Service Provider Members shall:

- (a) be entitled to receive notice of and attend all general meetings of the Company;
- (b) be entitled to vote in person, by proxy, attorney or representative at general meetings of the Company but not be entitled to vote on:
  - (i) any matter which requires a special resolution under the Corporations Act or this Constitution including, without limitation, any proposed amendment or amendments to this Constitution;
  - (ii) any matter raised at a general meeting of the Company in relation to which a majority of Ordinary Members or representatives of Ordinary Members who hold an Elected Board Position reasonably determine in their absolute discretion would involve placing the Service Provider Members in a position of conflict between the interests of the Company and the interests of the Service Provider Members or between the interests of Marketers and the interests of Service Providers if the Service Provider Members voted;
- (c) if a person, be entitled to be elected to the Board and otherwise, be entitled to have one (1) of their representatives elected to the Board in an Elected Board Position provided that, subject to Rule 49, not more than two (2) Service Provider Members or representatives of Service Provider Members shall be entitled to be elected to the Board in an Elected Board Position at any one time;
- (d) be entitled to receive publications of the Company, invitations to attend activities of the Company and industry information, when available;
- (e) be bound by Rule 106;
- (f) if a person, be entitled to be appointed to a sub-committee of the Board and otherwise be entitled to have a representative appointed to each sub-committee of the Board; and
- (g) be entitled to all other rights and privileges which members of corporations such as the Company are given by the Corporations Act, subject, if permitted by the Corporations Act, to anything inconsistent in this Constitution.

## 8. All Media Members shall:

- (a) be entitled to receive notice of and attend all general meetings of the Company;
- (b) be entitled to vote in person, by proxy, attorney or representative at general meetings of the Company but not be entitled to vote on:
  - (i) any matter which requires a special resolution under the Corporations Act or this Constitution including, without limitation, any proposed amendment or amendments to this Constitution;
  - (ii) any matter raised at a general meeting of the Company in relation to which a majority of Ordinary Members or representatives of Ordinary Members who hold an Elected Board Position reasonably determine in their absolute discretion would involve placing the Media Members in a position of conflict between the interests of the Company and the interests of the Media Members or between the interests of Marketers and the interests of the Media Members if the Media Members voted;
- (c) if a person, be entitled to be elected to the Board and otherwise, be entitled to have one (1) of their representatives elected to the Board in an Elected Board Position provided subject to Rule

49, that not more than two (2) Media Members or representatives of Media Members shall be entitled to be elected to the Board in an Elected Board Position at any one time;

- (d) be entitled to receive publications of the Company, invitations to attend activities of the Company and industry information, when available;
- (e) be bound by Rule 106;
- (f) if a person, be entitled to be appointed to a sub-committee of the Board and otherwise be entitled to have a representative appointed to each sub-committee of the Board; and
- (g) be entitled to all other rights and privileges which members of corporations such as the Company are given by the Corporations Act, subject, if permitted by the Corporations Act, to anything inconsistent in this Constitution.

9. All Associate Members shall:

- (a) be entitled to receive notice of and attend all general meetings of the Company;
- (b) not be entitled to vote at any general meetings of the Company;
- (c) not be counted for the purposes of constituting a quorum at general meetings of the Company;
- (d) if a person, not be entitled to be elected to the Board in an Elected Board Position and otherwise, not be entitled to have a representative elected to the Board in an Elected Board Position;
- (e) be entitled to receive publications of the Company, invitations to attend activities of the Company and industry information, when available;
- (f) not be bound by Rule 106; and
- (g) if a person, be entitled to be appointed to a sub-committee of the Board and otherwise, be entitled to have a representative appointed to each sub-committee of the Board; and
- (h) not be entitled to all other rights and privileges which members of corporations such as the Company are given by the Corporations Act.

10. All Tertiary Institution Affiliate Members shall:

- (a) be entitled to use the Company's best practice papers in course content;
- (b) be entitled to receive the Company's newsletter;
- (c) be entitled to receive invitations to attend selected seminars and events of the Company at members rates, as determined by the Board;
- (d) not be bound by Rule 106; and
- (e) not be entitled to any other rights and privileges which members of corporations such as the Company are given by the Corporations Act.

11. All Student Affiliate Members shall:

- (a) be entitled to receive the Company's newsletter;
- (b) be entitled to receive invitations to attend selected seminars and events of the Company at members rates, as determined by the Board;

- (c) be entitled to access (via password) the student section of the Company's website;
  - (d) be entitled to participate in a biennial student award;
  - (e) not be bound by Rule 106; and
  - (f) not be entitled to any other rights and privileges which members of corporations such as the Company are given by the Corporations Act.
12. Persons, firms, companies, bodies corporate, organisations or associations can apply for Ordinary Membership of the Company by completing a formal application for Ordinary Membership in writing in a form acceptable to the Board from time to time but which is to include nominations signed by at least two (2) Ordinary Members or representatives of Ordinary Members who personally know the applicant. Such applicant must be a Marketer who, in the year prior to applying for Ordinary Membership, spent over \$1million on the direct costs of producing and publishing advertising and marketing in any of its forms in furtherance of providing its goods and/or services throughout the Commonwealth of Australia or any part of the Commonwealth of Australia. All applications for Ordinary Membership must comply with any by-laws, rules or regulations relating to the code of conduct of Ordinary Members made by the Board from time to time and may be required to execute an indemnity the content of which will be determined by the Board from time to time.
  13. Persons, firms, companies, bodies corporate, organisations or associations can apply for Service Provider Membership of the Company by completing a formal application for Service Provider Membership in writing in a form acceptable to the Board from time to time but which is to include nominations signed by at least two (2) Ordinary Members or representatives of Ordinary Members who personally know the applicant. Such applicant must be a Service Provider.
  14. Persons, firms, companies, bodies corporate, organisations or associations can apply for Media Membership of the Company by completing a formal application for Media Membership in writing in a form acceptable to the Board from time to time but which is to include nominations signed by at least two (2) Ordinary Members or representatives of Ordinary Members who personally know the applicant. Such applicant must be a Media Provider.
  15. Persons, firms, companies, bodies corporate, organisations or associations can apply for Associate Membership of the Company by completing a formal application for Associate Membership in writing in a form acceptable to the Board from time to time but which is to include nominations signed by at least two (2) Ordinary Members or representatives of Ordinary Members who personally know the applicant. Such applicant may be:
    - (a) a Marketer; or
    - (b) a Service Provider; or
    - (c) a Media Provider.
  16. Persons, firms, companies, bodies corporate, organisations or associations can apply to become a Tertiary Institution Affiliate Member of the Company by completing a formal application for Tertiary Institution Affiliate Membership in writing in a form acceptable to the Board from time to time but which is to include nominations signed by at least two (2) Ordinary Members or representatives of Ordinary Members who personally know the applicant. Such applicant must be a Tertiary Institution.
  17. Persons can apply to become a Student Affiliate Member of the Company by completing a formal application for Student Affiliate Membership in writing in a form acceptable to the Board from time to time. Such applicant must be a Student.

18. At the next meeting of the Board after the receipt by the Company of any application for Ordinary Membership, Service Provider Membership, Media Membership, Associate Membership, Tertiary Institution Affiliate Membership or Student Affiliate Membership, or for change in the category of membership, or at such earlier time as may be determined by the Board, such application shall be considered by the Board, which shall thereupon make a determination regarding the admission or rejection of the applicant. In no case shall any reason be required to be given for the admission or rejection of an applicant. Notwithstanding any other provisions of this Constitution, only Ordinary Members or persons representing Ordinary Members holding Elected Board Positions shall be entitled to vote on any application for Ordinary Membership, Service Provider Membership, Media Membership, Associate Membership, Tertiary Institution Affiliate Membership or Student Affiliate Membership and a decision will be made by a majority of such Ordinary Members or persons representing Ordinary Members holding Elected Board Positions.
19. When an applicant has been accepted for Ordinary Membership, Service Provider Membership, Media Membership, Associate Membership, Tertiary Institution Affiliate Membership or Student Affiliate Membership, the Secretary shall forthwith send to the applicant written notice of acceptance and request payment of a pro-rata amount of the annual subscription fee as provided under this Rule 19 or such other amount as determined by the Board under Rule 20. Except as otherwise determined by the Board under Rule 20, the subscription fee payable by Members on admission to membership will be a pro-rata amount of the annual subscription fee set out in Rule 22 for the period from the date of admission to the following 30 June. Upon payment of the subscription fees, the applicant shall become a Member of the Company, provided nevertheless that if such payment be not made within two (2) months after the date of receipt by the applicant of the notice of acceptance, a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions may in their discretion cancel its acceptance of the applicant for Ordinary Membership, Service Provider Membership, Media Membership, Associate Membership, Tertiary Institution Affiliate Membership or Student Affiliate Membership of the Company.
20. On admission of a Member by the Board under Rule 18, if such Member has not been a Member of the Company in the 12 month period prior to the date of application, the Board may offer to the new Member a trial subscription fee arrangement on such terms and conditions as it determines. Such terms and conditions may include a period of membership during which subscription fees are not payable or a reduction in the annual subscription fees set out in Rule 22.
21. Subject to Rule 4, Rule 19 and Rule 20, annual subscription fees determined in accordance with Rule 22 shall become due and payable in advance by Members on 30 June in every year or, if the Member is a new Member, on receipt of the notice of acceptance of their application for membership pursuant to Rule 19.
22. The annual subscription fee for Ordinary Members, Service Provider Members, Media Members, Associate Members, Tertiary Institute Affiliate Members, Student Affiliate Members and subsidiaries or related bodies corporate of Members shall be determined by a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions from time to time.
23. The Company in general meeting may impose additional levies on Members as and when required.

#### **CESSATION OF MEMBERSHIP**

24. Subject to Rule 19 in relation to new Members, if the annual subscription fee of a Member shall remain unpaid for a period of two (2) calendar months after it becomes due then the Member may, after notice of the default shall have been sent to the Member by the Secretary or Honorary Treasurer, be debarred by resolution of a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions from all privileges of membership provided that a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions may reinstate the Member on payment of all arrears if that majority thinks fit to do so.

25. A Member may at any time, by giving notice in writing to the Secretary, resign the Member's membership of the Company but shall continue to be liable for any annual subscription fees and all arrears due and unpaid at the date of the Member's resignation and for all other monies due by the Member to the Company and, if an Ordinary Member, Service Provider Member or Media Member, for any sum not exceeding one hundred dollars (\$100.00) for which the Member is liable to pay under Rule 106.
26. If any Member shall wilfully refuse or neglect to comply with the provisions of this Constitution or shall be guilty of any conduct which in the opinion of a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions is unbecoming of a Member or prejudicial to the interests of the Company and/or if a Member does not comply with any by-law, rule or regulation made by the Board to regulate the conduct of Members, a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions shall have power by resolution to censure, fine, suspend, or expel the Member from the Company PROVIDED THAT at least one (1) week before the meeting of the Board at which such a resolution is passed, the Member shall have had notice of such meeting, of what is alleged against the Member and of the intended resolution and that the Member shall, at such meeting and before the passing of such resolution, have had an opportunity of giving, orally or in writing, any explanation or defence the Member may think fit and PROVIDED FURTHER THAT any such Member may by notice in writing lodged with the Secretary at least twenty-four (24) hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting. In that event, a general meeting of the Company shall be called for that purpose and if, at the meeting such a resolution be passed by a majority of two-thirds of those Ordinary Members, Service Provider Members and Media Members present and voting (such vote to be taken by ballot), the Member concerned shall be punished accordingly and, in the case of a resolution for the Member's expulsion, the Member shall be expelled.
27. If a Member of any category:
- (a) enters into any form of Insolvency; or
  - (b) is convicted of a criminal offence; or
  - (c) becomes of unsound mind or whose person or estate is liable to be dealt with under any applicable law relating to mental health,
- a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions shall have power by resolution to suspend or expel the Member from the Company PROVIDED THAT the procedure referred to in Rule 26 is adhered to.
28. If a Member of any category ceases to fulfil the criteria required in order to apply for the category of membership that it holds, the Board may, in its absolute discretion, determine to suspend or revoke the membership of that Member or to change the category of that Member's membership.

#### **DISPUTE RESOLUTION BETWEEN MEMBERS**

29. If any dispute arises between Members which may affect the Company and/or its objects and the dispute cannot be resolved by the Members involved, the Board may appoint an independent mediator, conciliator or arbitrator of its choice to resolve the dispute PROVIDED THAT all Members involved in the dispute agree to the appointment.

#### **GENERAL MEETINGS**

30. An annual general meeting of the Company shall be held in accordance with the provisions of the Corporations Act.

31. The Chairperson of the Board, or the Secretary on the requisition of the Chairperson, may, whenever he/she thinks fit, convene a general meeting of the Company. General meetings may also be convened by the Secretary on the requisition of a majority of members of the Board or on the requisition of the Ordinary Members, Service Provider Members and Media Members in accordance with the Corporations Act.
32. Subject to the provisions of the Corporations Act relating to special resolutions and agreements for shorter notice, twenty-one (21) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day for which notice is given) specifying the place, the day and the hour of meeting, and in the case of special business to be transacted at the meeting, the general nature of that business shall be given to those Members and other such persons as are entitled to receive such notices from the Company.
33. For the purpose of Rule 32, all business shall be special that is transacted at a general meeting or an annual general meeting, with the exception of the consideration of the annual financial reporting, and the reports of the Board and Auditors, the election of members of the Board to the Elected Board Positions in the place of those retiring, and the appointment of the Auditors, if necessary.

#### **PROCEEDINGS AT ANNUAL GENERAL MEETINGS AND GENERAL MEETINGS**

34. No business shall be transacted at any annual general meeting or general meeting unless a quorum is present at the time when the meeting proceeds to business. Except as otherwise provided, four (4) Ordinary Members present in person or as a proxy or attorney for or as representing a body corporate which is an Ordinary Member shall be a quorum.
35. If within half an hour from the time appointed for an annual general meeting or general meeting, a quorum is not present, the meeting, if convened upon the requisition of a majority of members of the Board or the requisition of the Ordinary Members, Service Provider Members and Media Members as provided by the Corporations Act, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Ordinary Members and Service Provider Members and Media Members present whether in person, by proxy, attorney or representative shall be a quorum.
36. The Chairperson shall preside as chairperson at every annual general meeting and general meeting of the Company, or if there is no Chairperson, or if he/she is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or if he/she is unwilling to act, the Deputy Chairperson shall be the chairperson. If the Deputy Chairperson is not present or is unwilling to act, then the Ordinary Members and Service Provider Members and Media Members present shall elect one (1) Ordinary Member or representative of an Ordinary Member from the Ordinary Members present to be chairperson of the meeting.
37. The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be as in the case of an original meeting. Subject to this Constitution, it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.
38. Subject to this Constitution at any annual general meeting or general meeting of the Company, a resolution put to the vote of the meeting shall be decided on a show of hands of Ordinary Members and Service Provider Members and Media Members unless a poll is (before or on the declaration of the result of the show of hands) demanded:
  - (a) by the chairperson; or

- (b) by at least three (3) Ordinary Members present in person, by proxy, attorney or representative.

Unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect made in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 39. If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith.
- 40. In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the resolution shall be taken as defeated.
- 41. An Ordinary Member or a Service Provider Member or a Media Member may vote in person or by proxy, attorney or by appointing a representative and on a show of hands every person present who is an Ordinary Member or Service Provider Member or Media Member or a representative of an Ordinary Member or Service Provider Member or Media Member shall have one vote and on a poll every Ordinary Member and Service Provider Member and Media Member present in person or by proxy or by attorney or by representative shall have one (1) vote. Under no circumstances shall Associate Members, Tertiary Institution Affiliate Members or Student Affiliate Members have any voting rights.
- 42. An Ordinary Member or Service Provider Member or Media Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under any applicable law relating to mental health may vote, whether on a show of hands or on a poll, by his/her committee or by his/her trustee or by such other person as properly has the management or his/her estate and any such committee, trustee or other person may vote by proxy or attorney.
- 43. No Ordinary Member or Service Provider Member or Media Member shall be entitled to vote in person, by proxy, attorney or representative at any general meeting or annual general meeting if his/her annual subscription fee is more than two (2) months in arrears at the date of the meeting.
- 44. The instrument under which an Ordinary Member or Service Provider Member or Media Member appoints a proxy shall be in writing under the hand of the appointor or of his/her attorney duly authorised in writing or, if the appointor is a body corporate, either under seal, as permitted under section 127 of the Corporations Act or under the hand of an officer or attorney of the body corporate duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. An Ordinary Member or Service Provider Member or Media Member shall be entitled to instruct his/her proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed, the proxy may vote as he/she thinks fit.
- 45. The instrument appointing a proxy may be in the following form or in a common or usual form or a form acceptable to the Board:

AUSTRALIAN ASSOCIATION OF NATIONAL ADVERTISERS  
ABN 54 003 179 673

I/We \*, ..... of .....

being an Ordinary Member/Service Provider Member/Media Member\* of AUSTRALIAN ASSOCIATION OF NATIONAL ADVERTISERS ABN 54 003 179 673 hereby appoint ..... of ..... or failing him/her\* ..... of ..... as my/our\* proxy to vote for me/us\* on my behalf at the Annual General Meeting/general meeting\*) of the Company to be held on ..... 20 ... and at any adjournment thereof.

The proxy is hereby authorised to vote in favour of/against\* the following resolutions:

Signed .....

..... 20...

(Note: In the event of the Ordinary Member or Service Provider Member or Media Member desiring to vote for or against any resolution he/she shall instruct his/her proxy accordingly. Unless otherwise instructed, the proxy may vote as he/she thinks fit.)

\* Strike out whichever is not desired.

46. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty- four (24) hours before the time appointed for the taking of the poll. In default, the instrument of proxy shall not be treated as valid.
47. A vote given in accordance with the terms of an instrument of proxy or attorney or other authority shall be valid notwithstanding the previous death or unsoundness of mind of the principal, or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

### THE BOARD

48. The Board shall consist of not less than four (4) and not more than fourteen (14) members in total.
49. Between the 2008 and 2009 annual general meeting, the Board may include a combination of:
- (a) up to twelve (12) Ordinary Members or Service Provider Members or persons representing Ordinary Members or Service Provider Members, all of whom shall be elected in accordance with this Constitution, provided that the Board shall not include more than three (3) Service Provider Members or Media Members or representatives of Service Provider Members or Media Members; and
  - (b) no more than two (2) persons appointed by the members of the Board holding Elected Board Positions to Appointed Board Positions in accordance with this Constitution.
50. From the 2009 annual general meeting, the Board may include a combination of:
- (a) no more than two (2) Service Provider Members or persons representing Service Provider Members, elected to Elected Board Positions in accordance with this Constitution;

- (b) no more than two (2) Media Members or persons representing Media Members, elected to Elected Board Positions in accordance with this Constitution;
  - (c) no more than two (2) persons appointed by the members of the Board holding Elected Board Positions to Appointed Board Positions in accordance with this Constitution;
  - (d) no less than four (4) and no more than eight (8) Ordinary Members or persons representing Ordinary Members, elected to Elected Board Positions in accordance with this Constitution, provided that no more than three (3) Ordinary Members or persons representing Ordinary Members from the same industry (as determined by the Board from time to time) hold an Elected Board Position at any time.
51. Subject to Rule 61(d), elections for the Elected Board Positions will be held at every annual general meeting of the Company with those persons to retire being determined in accordance with Rule 52.
  52. Subject to Rule 53, the following members of the Board automatically retire and are eligible for re-appointment (and if not re-appointed, that retirement takes effect at the conclusion of that annual general meeting):
    - (a) any member of the Board appointed to fill a casual vacancy by the Board under Rule 64 since the previous annual general meeting;
    - (b) half (or if that is not a whole number the next lowest whole number nearest to half) of the members of the Board holding Elected Board Positions, excluding the persons required to retire in accordance with Rule 52(a), as determined in accordance with Rule 53.
  53. The members of the Board who retire by reason of Rule 52(b) are those persons the subject of that rule who have been in office the longest and, as between persons who have been in office for an identical period since last elected, those to retire are (unless they otherwise agree among themselves) to be selected by the Secretary by lot.
  54. From time to time the members of the Board holding Elected Board Positions are entitled to appoint up to two (2) members of the Board to Appointed Board Positions, as they think fit in order to complement the composition of the Board. These persons need not be Members or representatives of Members.
  55. In order to exercise their rights under Rule 54, the members of the Board holding Elected Board Positions must pass a resolution at a Board meeting approving appointment to the Board.
  56. Subject to satisfaction of the requirements of the Corporations Act in relation to the consent and eligibility of directors, a person named in a resolution of the members of the Board holding Elected Board Positions passed in accordance with Rule 55 becomes a member of the Board holding an Appointed Board Position upon the passing of the resolution.
  57. At each annual general meeting of the Company, each person holding an Appointed Board Position must retire, but shall be eligible for re-appointment.
  58. The members of the Board holding Elected Board Positions may remove a member of the Board holding an Appointed Board Position at any time by passing a resolution to that effect.
  59. The Board will elect the office-bearers from amongst those Ordinary Members or representatives of Ordinary Members holding Elected Board Positions each year, as soon as reasonably practicable after each annual general meeting.
  60. The office-bearers of the Company shall consist of a Chairperson, a Deputy Chairperson and a Treasurer, who shall be Ordinary Members of the Company or persons representing Ordinary Members of the Company holding Elected Board Positions.

61. Subject to Rules 48 to 60, the election of members of the Board to Elected Board Positions shall take place in the following manner:
- (a) any two (2) persons who are Ordinary Members shall be at liberty to propose and second any other Ordinary Member or representative of an Ordinary Member, or any Service Provider Member or representative of a Service Provider Member or any Media Member or representative of a Media Member, to serve as a member of the Board in an Elected Board Position;
  - (b) the nomination shall be in writing in a form approved by the Board from time to time, signed by the nominated Ordinary Member or Service Provider Member or Media Member or the nominated person representing the Ordinary Member or Service Provider Member or Media Member and his/her proposer and seconder and shall be lodged with the Secretary at least forty (40) days before the annual general meeting at which the election is to take place or such other period as may be determined by a majority of the Ordinary Members or persons representing Ordinary Members holding Elected Board Positions;
  - (c) the Board must hold a meeting as soon as practicable after receipt of the nominations, at which the Board must determine:
    - (i) which industry each nominee is from;
    - (ii) how many members of the Board who will continue to hold a position on the Board after the relevant annual general meeting are also from that industry; and
    - (iii) the maximum number of positions on the Board that will be available to be filled at the annual general meeting elections by candidates from that industry, having regard to Rule 50(d);
  - (d) if the number of persons nominated to a Category is less than the number of available positions for that Category, all those persons nominated for that Category will become members of the Board automatically without the need for an election, effective from the end of the relevant annual general meeting;
  - (e) if the number of persons nominated to a Category is greater than the number of positions available on the Board for that Category, the Company must include in the notice of annual general meeting a list of the candidates' names in that Category, the names of each candidate's proposer and seconder, which Category that candidate represents i.e. whether the candidate is an Ordinary Member or its representative, a Service Provider Member or its representative or a Media Member or its representative and if the candidate is an Ordinary Member or its representative, which industry that candidate is from, and the maximum number of positions on the Board that will be available to be filled at the annual general meeting elections for candidates from that industry;
  - (f) if there is to be an election at the annual general meeting, balloting lists must be prepared containing the names of the candidates in alphabetical order, divided into Ordinary Members or their representatives, Service Provider Members or their representatives and Media Members or their representatives and in the case of Ordinary Members and their representatives, further divided into the industries determined by the Board in accordance with paragraph (c) above and clearly indicating the maximum number of positions on the Board available to be filled by candidates from that industry;
  - (g) each Ordinary Member, Service Provider Member and Media Member present in person, by proxy, attorney or representative at the annual general meeting is entitled to vote for a number of candidates not exceeding the number of vacancies on the Board, provided that no Member will be entitled to vote for more:

- (i) Service Provider Members than the number of vacancies on the Board for Service Provider Members to be filled at the annual general meeting;
- (ii) Media Members than the number of vacancies on the Board for Media Members to be filled at the annual general meeting; and
- (iii) Ordinary Members from a particular industry than the number of vacancies on the Board for Ordinary Members from that particular industry to be filled at the annual general meeting,

having regard to Rule 50;

- (h) the persons elected to the Board at the annual general meeting will be those persons with the largest number of votes, provided that subject to Rule 49 no more than two (2) Service Provider Members or their representatives, two (2) Media Members or their representatives and eight (8) Ordinary Members or their representatives of whom only three (3) Ordinary Members or their representatives can be from any one industry (as determined by the Board) may hold positions on the Board at any time; and
  - (i) persons elected to the Board in accordance with this clause will take their positions on the Board from the close of the relevant annual general meeting.
62. The title "A.A.N.A. Counsellor" may be conferred by the Board upon any individual who has served or is serving the Company in some special manner and who is willing to make himself/herself available as opportunity permits to advise and assist the Company. The Board also has the power in its absolute discretion to remove the title "A.A.N.A. Counsellor" from any person to whom it has been conferred. An A.A.N.A. Counsellor shall have such rights and powers as the Board may, in its absolute discretion, determine.
63. The Company may from time to time by special resolution passed in accordance with this Constitution at an annual general meeting or general meeting increase or reduce the number of office-bearers or other members of the Board.
64. The Board shall have power at any time, and from time to time, to appoint any Ordinary Member or Service Provider Member or Media Member of the Company or, a representative of the Ordinary Member or Service Provider Member or Media Member as a member of the Board to fill a casual vacancy having regard to Rules 49 and 50 and provided that any member of the Board appointed in accordance with this Rule shall only hold office until the next annual general meeting of the Company.
65. The Company may, by ordinary resolution of which special notice pursuant to Section 203D of the Corporations Act has been given, remove any office-bearer or other member of the Board before the expiration of his/her period of office, and may, by an ordinary resolution, appoint another person being an Ordinary Member or Service Provider Member or Media Member or a representative of an Ordinary Member or Service Provider Member or Media Member in his/her stead in accordance with the procedure in Rule 61(with the necessary changes applying). The person so appointed shall hold office only until the annual general meeting at which elections are next to be held.
66. In addition to the other provisions of this Constitution dealing with the removal or retirement of members of the Board, the office of a member of the Board shall become vacant if the member:
- (a) enters into any form of Insolvency;
  - (b) becomes prohibited from being a director of a company by reason of any order made under the Corporations Act;
  - (c) ceases to be a director in accordance with this Constitution;

- (d) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns his/her office by notice in writing to the Company;
- (f) for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period;
- (g) holds any office of profit under the Company;
- (h) in respect of a person holding an Elected Board Position, ceases to be an Ordinary Member or Service Provider Member or Media Member or representative of an Ordinary Member or Service Provider Member or Media Member of the Company;
- (i) is directly or indirectly interested, within the meaning of Section 191 of the Corporations Act, in any contract or proposed contract with the Company, provided always that nothing in this sub-Rule shall affect the operation of Rule 107; or
- (j) is disqualified from office pursuant to Rule 69.

#### **POWERS AND DUTIES OF THE BOARD**

- 67. Each member of the Board must disclose to the other Board members the details of any business or commercial relationships which that member of the Board, or the Ordinary Member, Service Provider Member or Media Member that member represents, has with any other member of the Board, or the Ordinary Member, Service Provider Member or Media Member that any other member of the Board represents, as soon as practicable after becoming aware of such a relationship.
- 68. Upon disclosure of a business or commercial relationship between two or more members of the Board in accordance with Rule 67, the Ordinary Members or their representatives who hold Elected Board Positions, other than those involved in the relevant commercial or business relationship, must determine in their absolute discretion whether the nature of the relationship creates a conflict of interest such that it requires one or more Service Provider Members or Media Members or their representatives to be disqualified from membership of the Board.
- 69. If the Ordinary Members or their representatives who hold Elected Board Positions resolve that the nature of the relationship disclosed in accordance with Rule 67 creates a conflict of interest such that it requires one or more Service Provider Members or Media Members or their representatives to be disqualified from office, the relevant Service Provider Members or Media Members or their representatives will be disqualified from office from the time that such a resolution is passed.
- 70. The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Corporations Act or this Constitution required to be exercised by the Company in general meeting PROVIDED THAT any rule, regulation or by-law of the Company issued or made by the Board may be disallowed by the Company in general meeting and PROVIDED FURTHER THAT no resolution passed by the Company in general meeting shall invalidate any prior act of the Board, which would have been valid if that resolution had not been passed.
- 71. The Chairperson or any person to whom the Chairperson delegates such power shall have the power to make or issue public statements on behalf of the Company.
- 72. The Chairperson and the Deputy Chairperson shall jointly have the power, or may jointly delegate to any person the power to appoint, employ, remove, terminate or suspend such employees and other persons as may be necessary or convenient for the purposes of the Company.

73. The functions and duties of the Board shall include, but shall not be limited to:
- (a) the administration of the Constitution in accordance with the Corporations Act;
  - (b) the carrying out of the objects of the Company;
  - (c) the collection of subscriptions, levies and other monies pursuant to this Constitution;
  - (d) the consideration of all matters affecting the Company and its Members;
  - (e) effecting all resolutions passed by the Board and the Members; and
  - (f) the supervision and control of the affairs of the Company in all matters.
74. Without limiting Rule 73, the Board may borrow or raise or secure the payment of money in such manner as the Board may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities.
75. For the purpose of Rule 107 the rate of interest payable in respect of money lent by Members to the Company shall not exceed the lowest rate for the time being paid by banks in respect of term deposits applicable at the time of the loan.
76. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two members of the Board or in such other manner as the Board from time to time determines.
77. The Board shall cause minutes to be made:
- (a) of all appointments of officers;
  - (b) of the names of the members of the Board present at all meetings of the Company and of the Board; and
  - (c) of all proceedings at all meetings of the Company and of the Board.
- Such minutes shall be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

#### **PROCEEDINGS OF THE BOARD**

78. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The Chairperson may at any time, and the Secretary shall on the requisition of a majority of members of the Board, convene a meeting of the Board.
79. Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the members of the Board present shall for all purposes be deemed a determination of the Board.
80. Where a majority of Ordinary Members or representatives of Ordinary Members who hold Elected Board Positions reasonably determine in their absolute discretion that a conflict of interest exists in relation to a matter raised at a meeting of the Board between the interests of the Company and the interests of the Service Provider Members or between the interests of Marketers and the interests of Service Providers, then any and all such members of the Board who are Service Provider Members or

representatives of Service Provider Members shall not be entitled to vote at or be counted for the purposes of constituting a quorum in relation to that matter at the meeting of the Board.

81. Where a majority of Ordinary Members or representatives of Ordinary Members who hold Elected Board Positions reasonably determine in their absolute discretion that a conflict of interest exists in relation to a matter raised at a meeting of the Board between the interests of the Company and the interests of the Media Members or between the interests of Marketers and the interests of Media Providers, then any and all such members of the Board who are Media Members or representatives of Media Members shall not be entitled to vote at or be counted for the purposes of constituting a quorum in relation to that matter at the meeting of the Board.
82. The quorum necessary for the transaction of the business of the Board shall be at least four (4) members of the Board or such greater number as may be fixed by the Board, all of whom shall be Ordinary Members or representatives of Ordinary Members who hold Elected Board Positions. A quorum of members of the Board (or members of a committee of the Board) shall be deemed to hold and to be present at a meeting of the Board when, with the express intention of holding an Board meeting, they communicate through a telephone, video, telecommunication or other conference facility of any kind in circumstances where each of them can simultaneously hear what is said by, and can speak to, the other or others of them.
83. The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and for so long as their number is reduced below the number fixed by Rule 82 as the necessary quorum of the Board, the continuing member or members of the Board may act for the purpose of increasing the number of members of the Board to that number or of convening a general meeting of the Company, but for no other purpose.
84. The Chairperson shall preside as chairperson at every meeting of the Board, or if there is no Chairperson, or if at any meeting he/she is not present within fifteen (15) minutes after the time appointed for holding the meeting, or if being present, he/she is unwilling to preside, the Deputy Chairperson shall be chairperson. If a Deputy Chairperson is not present at the meeting then the remaining members of the Board may choose one of their number who holds an Elected Board Position to be chairperson of the meeting.
85. The Board may delegate any of its powers and or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general law) to one or more sub-committees consisting of such persons, whether Members or representatives of Members of the Company or not, as the Board thinks fit and approves in writing. Any sub-committee so formed shall conform to any regulations that may be given by the Board and all members of such sub-committees shall have one (1) vote at meetings of the sub-committee. The Board may dissolve any such sub-committee at any time or may, at any time, remove an individual from a sub-committee by notice in writing to that individual.
86. Subject to any regulations given by the Board to a sub-committee, every sub-committee may meet and adjourn as it thinks proper. Subject to Rules 87 and 88, questions arising at any meeting of a sub-committee shall be determined by a majority of votes of the sub-committee members present.
87. Where a majority of Ordinary Members or representatives of Ordinary Members who hold Elected Board Positions determine in their absolute discretion that a conflict of interest exists in relation to a matter raised at a meeting of a sub-committee between the interests of the Company and the interests of any Service Provider Members or between the interests of Marketers and the interests of Service Providers, then any and all members of the sub-committee who are Service Provider Members or representatives of Service Provider Members or who are in businesses similar to those carried on by Service Provider Members shall not be entitled to vote at or be counted for the purposes of constituting a quorum in relation to that matter at the meeting of the sub-committee.

88. Where a majority of Ordinary Members or representatives of Ordinary Members who hold Elected Board Positions determine in their absolute discretion that a conflict of interest exists in relation to a matter raised at a meeting of a sub-committee between the interests of the Company and the interests of any Media Members or between the interests of Marketers and the interests of Media Providers, then any and all members of the sub-committee who are Media Members or representatives of Media Members or who are in businesses similar to those carried on by Media Members shall not be entitled to vote at or be counted for the purposes of constituting a quorum in relation to that matter at the meeting of the sub-committee.
89. All acts done by any meeting of the Board, of a sub-committee or by any member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Board, sub-committee or member of the Board or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or sub-committee.
90. Each decision and policy agreed to by a sub-committee shall stand as a recommendation only to the Board. It is the general policy of the Board to acknowledge and record a resolution confirming its approval or dissent of or from a resolution of a sub-committee.
91. No sub-committee shall be empowered to expend funds of the Company without the prior approval of the Board which may determine what sum shall be granted to a sub-committee for the purpose of its work.
92. A resolution in writing signed by all members of the Board in Australia for the time being entitled to receive notice of a meeting of the Board and vote on the particular matter being considered, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board.
- 93.
- (a) A member of the Board may, with the consent of the other members of the Board, which consent shall not be unreasonably withheld, appoint a person to be an alternate member of the Board in his/her place during such period as he/she thinks fit.
  - (b) An alternate member of the Board is entitled to receive notice of meetings of the Board and, if the appointor is not present at such a meeting, is entitled to attend and vote in his/her stead, to the extent that his/her appointor is authorised to vote.
  - (c) If an appointor is not present at a meeting of the Board, the appointor's alternate member of the Board may exercise powers that the appointor may exercise and the exercise of any such power by the alternate member of the Board shall be deemed to be the exercise of the power by the appointor.
  - (d) The appointment of an alternate member of the Board may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate member of the Board has not expired, and terminates in any event if the appointor vacates office as a member of the Board.
  - (e) An appointment, or the termination of an appointment, of an alternate member of the Board shall be effected by a notice in writing signed by the member of the Board who makes or made the appointment and served on the Company.
  - (f) At any meeting at which an appointor is not present and the appointor's alternate member of the Board is present as such alternate, he/she shall be deemed a member of the Board for the purpose of constituting a quorum and for all other purposes.

94. The Secretary and any assistant Secretary shall, in accordance with Section 204A of the Corporations Act, be appointed by the Board for such term upon such conditions as it thinks fit, and any Secretary and any assistant Secretary so appointed may be removed by it. The Secretary and any assistant Secretary need not be a Member or a representative of a Member. Nothing in this Constitution shall prevent the Board from appointing an Ordinary Member or Service Provider Member or Media Member of the Company or, a representative of the Ordinary Member or Service Provider Member or Media Member as Honorary Secretary.

### **SEAL**

95. The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board or of a sub-committee of the Board authorised by the members of the Board. Every instrument to which the Seal is affixed shall be signed by a member of the Board and shall be countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for that purpose.

### **ACCOUNTS**

96. The Board shall cause proper accounting and other records to be kept and shall within the deadlines set out in Section 315 of the Corporations Act report to Members for a financial year in accordance with Section 314 of the Corporations Act provided however that the Board shall cause to be made out and laid before each annual general meeting the annual financial report made up to a date not more than four (4) months before the date of the meeting together with Board's report and auditors' report.
97. The Board shall from time to time determine at what times and places and under what conditions or regulations, the accounting and other records of the Company shall be open to the inspection of Members.

### **AUDIT**

98. A properly qualified Auditor or Auditors shall be appointed and his/her or their duties regulated in accordance with Section 327 of the Corporations Act.

### **NOTICE**

99. Any notice required by law or by or under this Constitution to be given to any Member shall be given by serving it on him/her personally or sending it by pre-paid post to him/her or by facsimile or email. Notices sent in accordance with this Rule shall be sent to the Member at his/her registered address, or to the address, if any, last supplied to the Company by him/her for the giving of notices. Where a notice is hand delivered, it shall be deemed received on the next following Business Day after delivery. If sent by post, service of the notice shall be deemed to be effected on the second Business Day after the date of its posting. If sent by facsimile or email, it shall be deemed received on the day of error-free transmission if transmitted during a Business Day, otherwise on the next following Business Day. All notices must be in writing.
100. (a) Notice of every annual general meeting or general meeting shall be given in any manner hereinbefore authorised to:
- (i) every Ordinary Member, Service Provider Member, Media Member and Associate Member except those Members for whom the Company has no registered address or other address or any address for the giving of notices to them; and
  - (ii) the Auditor or Auditors for the time being of the Company.

- (b) No other person shall be entitled to receive notices of annual general meetings or general meetings.

### **WINDING UP**

101. If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the Members of the Company, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company, and whose Constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company by virtue of Rule 107, such institution or institutions to be determined by the Ordinary Members and the Service Provider Members and the Media Members of the Company at or before the time of the dissolution and in default thereof by application to the Supreme Court of New South Wales for determination.

### **BY-LAWS**

102. Except as otherwise determined by law or this Constitution, a majority of the Ordinary Members or persons representing Ordinary Members who hold Elected Board Positions shall have full power to make any rules, regulations or by-laws not inconsistent with this Constitution on all matters relating to the affairs of the Company and the conduct or management of its business or otherwise for the purpose of carrying out the objects of the Company and also on all matters relating to the rights and obligations of Members and any category thereof and all rules, regulations or by-laws so made and for the time being in force shall be binding on the Members of the Company as if they formed part of this Constitution and shall have full effect accordingly provided however that a copy of any rule, regulation or by-law so made is sent to each Member of the Company within fourteen (14) days from the date that it is made and provided further that any rule, regulation or by-law so made may be rescinded or amended by resolution of a majority of the Ordinary Members or persons representing Ordinary Members who hold Elected Board Positions or of the Company in general meeting.

### **INDEMNITY**

- 103.
- (a) To the extent permitted by law:
- (i) every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Corporations Act; and
- (ii) every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the Officer in his or her capacity as an Officer of the Company or a subsidiary of the Company provided that this indemnity shall not apply where the liability arises out of conduct involving a lack of good faith.
- (b) To the extent permitted by law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

- (i) incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 or 183 of the Corporations Act; or
  - (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.
- (c) In this Rule 103:
- (i) the term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as an Officer of the Company or of a subsidiary of the Company (including proceedings alleging that he was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a subsidiary of the Company);
  - (ii) the term "Officer" has the meaning given to that term in Section 82A of the Corporations Act.
104. The Company need not indemnify a person, as provided for in Rule 103, in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.
105. The objects for which the Company is established are:
- (a)
    - (i) To promote protect and advance the interests of Marketers;
    - (ii) To promote and advance standards of advertising and marketing;
    - (iii) To promote the elimination of fraudulent untruthful or misleading advertising and marketing activities;
    - (iv) To promote public confidence in advertising and marketing;
    - (v) To protect and advance the right and freedom to advertise and market any product or service which is lawful to make or provide;
    - (vi) To promote public awareness and understanding of advertising and marketing and their economic benefits.
  - (b) Solely for the purpose of carrying out the aforesaid objects and not otherwise:
    - (i) To hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith PROVIDED THAT no Member shall receive any prize, award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Company;
    - (ii) To subscribe to, become a member of and co-operate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to the objects of the Company PROVIDED THAT the Company shall not subscribe to or support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the company under or by virtue of Rule 107;

- (iii) To buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the Members of the Company or persons frequenting the Company's premises;
- (iv) To purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company, PROVIDED THAT in case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts;
- (v) To enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive, to the objects of the Company or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (vi) To appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the Company;
- (vii) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (viii) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (ix) To purchase, take on lease, licence or in exchange, have or otherwise acquire any real or personal property or rights and to invest and deal with the money of the Company not immediately required in such manner as the Board thinks fit.
- (x) To borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities.
- (xi) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- (xii) To purchase, take on lease, licence or in exchange, have or otherwise acquire any real or personal property or right and to sell, improve, manage, develop,

exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

- (xiii) To take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchasers and others.
- (xiv) To take any gift or property whether subject to any special trust or not, for any one or more of the objects of the company but subject always to the proviso in sub-paragraph (b).
- (xv) To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise.
- (xvi) To print and publish any newspapers, periodicals, books or leaflets that the Company may think desirable for the promotion of the objects of the Company.
- (xvii) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- (xviii) To transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- (xix) To make donations for patriotic or charitable purposes.
- (xx) To transact any lawful business in aid of the Commonwealth of Australia in the prosecution of any war in which the Commonwealth of Australia is engaged PROVIDED THAT the Company shall not support with its funds any activity or endeavour to impose on or procure to be observed by its Members or others any regulations or restrictions, which if an object of the Company would make it a trade union within the meaning of any statute or regulation of the Commonwealth of Australia or any state or territory thereof.

- (c) The powers set forth in Section 124(1) of the *Corporations Act* shall not apply to the Company except insofar as they are included in this Rule 105 or otherwise in this Constitution.

- 106. The liability of the Members is limited. Each Ordinary Member, Service Provider and Media Member undertakes to contribute to the property of the Company, in the event of the same being wound up while he/she is a Member, or within one year after he/she ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before he/she ceases to be a Member) and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred dollars (\$100).
- 107. The income and property of the Company, wheresoever derived, shall be applied solely towards the promotion of the objects of the Company; and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Members of the Company PROVIDED THAT nothing in this Constitution shall prevent the payment in good faith of remuneration to any

officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this Rule by this Constitution on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company but so that no member of the Board shall be appointed to any salaried office of the Company or any office of the Company paid by fees and that no remuneration or other benefit in money or money's worth shall be paid or given by the Company to any member of such Board except repayment of out-of pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Company.